

State Supreme Court will tackle “psychiatric boarding” debate

By Sean Robinson

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Can people with mental illness be held against their will in hospital emergency departments without mental-health treatment?

Advocates for people with mental illness say no. State leaders say yes.

After long months, the debate is headed for the state Supreme Court, and an argument that could alter the course of state mental-health policy.

The high court will hear oral arguments at 9 a.m. Thursday in Olympia. On one side stands the Department of Social and Health Services, which administers mental-health services across the state. On the other side: advocates for patients facing involuntary commitment, backed by associations of state hospitals, doctors and nurses, among others.

The debate targets the practice of “psychiatric boarding,” a bureaucratic euphemism. In real-world terms, it means holding patients against their will in hospital rooms without mental-health treatment. Patients say the practice violates their civil rights. State leaders say it doesn’t.

The practice is legal under current law, but a March 2013 decision by Pierce County Superior Court Commissioner Craig Adams labeled it unconstitutional. First reported by The News Tribune in a series of [stories](#) in [2013](#), the ruling forced a debate that pits the civil rights of people with mental illness against the state’s involuntary commitment practices.

Psychiatric boarding is a component of the state’s procedures governing involuntary commitment of people with mental illness – one piece of a mental-health system that costs roughly \$500 million each year. According to those commitment procedures, patients who show a grave disability or present an imminent risk of harm to themselves or others can be detained against their will for up to 72 hours. After that, they’re entitled to a hearing in court to determine whether they should be committed for longer periods.

In theory, committed patients are supposed to receive a psychiatric evaluation and be sent to state-certified evaluation and treatment centers within three days. However, due to state budget cuts and corresponding reductions in services, patients are spending weeks and sometimes months in hospital emergency departments, where they don’t receive the mental-health treatment guaranteed by state and federal law.

Patient advocates, underlining the word “involuntary,” point out that patients have no choice when it comes to psychiatric boarding. They’re held against their will. The tradeoff is supposed to be treatment, but the patients don’t get it.

Adams issued his ruling against that backdrop, as more than a dozen patients strapped to hospital gurneys rolled into the commitment court at Western State Hospital in Lakewood, waiting for beds to open. The ruling, later affirmed by Pierce County Superior Court Judge Kathryn Nelson, included a subtle stinger: psychiatric boarding could not be used solely because of overcrowding at mental-health treatment centers. No vacancy was no excuse. The argument zoomed to the high court.

It set the stage for a debate some legal experts have compared to the McCleary decision, a recent Supreme Court ruling regarding education funding. In that case, the high court found the state was failing to fund basic education.

The mental-health case stands on slightly different ground, but the state would face a serious dilemma if the court rules in favor of patients. A practice used throughout the state to temporarily confine mental patients would become illegal due to lack of funded space.

“If upheld, (the decision) would likely result in detained persons being released any time that a certified bed is not available, where they could pose a danger to themselves or others,” the DSHS briefing states.

State statistics cited in briefings to the high court indicate that psychiatric boarding has exploded in recent years. A total of 1,221 mental patients across the state were boarded in 2007. By 2013, the number had almost tripled, to 3,421 patients, according to DSHS numbers.

The figures coincide with state cuts to mental-health treatment funding: Between 2000 and 2010, the state reduced beds at state-certified treatment facilities from 790 to 593.

Attorneys for the hospitals, doctors and nurses have filed friend-of-the-court briefs arguing hospitals and their staffs are rarely equipped to provide the mental-health treatment patients require.

Hospitals across the state (one briefing lists 98 of them) provide emergency medical treatment and care, but few offer mental-health services. The result: patients are simply held in emergency departments, sometimes with physical restraints and little else.

“The use of seclusion, restraint or forced medication intended to calm the agitated patient has the potential for harmful side effects, both physical and psychological,” one briefing states. “Rather than provide ongoing treatment, the primary goal in many emergency departments is to keep psychiatric patients safe – to ensure they do not harm themselves or anyone else – until they can be moved to an appropriate facility to receive the definitive mental-health treatment they require.”

The state's defense rests almost entirely on procedure. State attorneys argue that the judges, Adams and Nelson, had no authority to issue their rulings, and that patients should have argued in different venues to change state rules.

Patient advocates say those arguments ignore the constitutional rights of patients.

"Mental health treatment has become a scarce resource," one briefing states. "The solution urged by the appellants is that mentally ill persons should be locked up in an emergency room to wait their turn. Respondents urge this court to reject this so-called solution and affirm the Superior Court's ruling."

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